

REMARKS

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After entering the instant amendment, claims 1-3 and 5-30 are pending in the present application, claim 4 having been previously cancelled and its subject matter incorporated into amended claim 2. Claim 30 was previously added. The claims have been amended to make clear that the composition is a personal cleansing composition (the claims are now directed to personal care cleansing products) which contain visually discrete layers which appear upon settling. The term "consisting essentially of" has been used in the claims to reflect the fact that the claims incorporate the specifically enumerated (claimed) components and any component which does not change the basic and novel characteristics of the compositions of the present invention which relate to the visually discrete layers which appears in the composition upon settling after mixing the composition. Applicants believe that with the presentation of the instant amendment, no credible argument may be made that the cited prior art teaches or motivates the present compositions inasmuch as the present invention and its visually discrete layers, which are a critical feature of the present compositions because of the favorable cosmetic effect which they produce, and the art produces thoroughly mixed compositions which would be seen to be inoperative if visually discrete layers were produced. It is respectfully submitted that the instant application is now in condition for allowance. Support for the amendments to the claims can be found throughout the original specification and claims and in particular on the bottom of page 3, page 4, page 5, page 8, the top of page 9, page 10, bottom of page 11 and top of page 12, page 13, first and second full paragraphs, page 14, bottom, and the examples, which are presented on pages 15-20. Note that the present paper is a resubmission of an earlier filed amendment which places all of the claims in their proper order. Applicants realized after receiving the recent paper that there was an error in the numbering of the claims of the previously filed paper caused by the insertion of a prompt in the electronic file by Word 2000. That has been corrected in this paper. No other modification has been made to the previously filed amendment and but for the change in numbering, the instant paper is substantively identical to the paper filed (certificate of mailing) October 14, 2004.

Applicants wish to thank Examiner Venkat for the courtesy of her telephonic interview with the undersigned attorney on October 5, 2004 during which the allowability of the instant claims was discussed.

The Examiner has rejected the previously pending claims variously under 35 U.S.C. §102 and 103 for the reasons which are presented in the office action dated September 7, 2004. Applicants respectfully traverse the Examiner's rejections for the reasons which are presented in the sections which follow. It is respectfully submitted, that with the amendment to the claims, there is no possible way to conclude that the presently claimed invention is anticipated or rendered obvious by the art cited by the Examiner.

The §102 Rejections

The Examiner has rejected previously filed claims 1, 8, 11, 13, 16 and 22 under 35 U.S.C. §102 as being anticipated by U.S. patent no. 4,293,305 ("Wilson"). Essentially, the Examiner argues that Wilson, which discloses a composition in example 7 which contains propylene glycol benzoate as a high density aromatic ester and a polyoxyethylene compound or alkyl ether phosphate, which read on the claimed surfactants, the present claims are anticipated. Applicants respectfully traverse the Examiner's rejection here.

The present invention relates to personal cleansing compositions such as body cleansers and shampoos, for example, which are multiple phase surfactant compositions comprising at least two distinct and separate liquid phases upon settling, wherein the compositions consist essentially of a first or lower high density layer comprising at least one high density aromatic ester (as defined in the specification on page 7 as a high density aromatic ester emollient/conditioning agent) having a specific gravity of greater than 1.00 and at least one additional layer consisting essentially of a surfactant solution having a specific gravity which is less than the specific gravity of the high density layer. The present invention is directed to compositions which exhibit activity as surfactant compositions having emollient characteristics and a visually pleasant two-layered liquid presentation. The compositions are particularly adapted as personal care cleansing compositions having both cosmetic characteristics and favorable presentation. Thus, the present

invention relates to personal care compositions which exhibit excellent surfactant and emollient/conditioning characteristics with a superior presentation, that presentation being the separation of the product into at least two visually distinct liquid layers upon settling after mixing.

Wilson does not anticipate the present invention. In the first instance, Wilson is directed to textile processing compositions which contain components such as cycloaliphatic diester textile treating components which are *not* included in compositions according to the present invention. Note the amended claims which are directed to personal cleansing products (personal care products) consisting essentially of the claimed components cannot include components such as those disclosed in Wilson, which would negate its use as a personal cleansing product. Just based upon this single distinction, *alone* the present claims are not anticipated by the disclosure of Wilson. In addition, there is absolutely no evidence that any of the examples of Wilson would produce a multi-layered composition upon settling. There is absolutely no reason to produce more than one layer in the Wilson disclosed compositions and in particular, if the Wilson compositions were multi-layered, such multi-layering could have significant deleterious consequences (reduced efficacy) for the intended purpose disclosed in Wilson- that of treating textiles. Moreover, in Wilson, which is directed to *industrial textile treating compositions*, there is absolutely no reason to provide a multi-layered effect which would give rise to a cosmetically pleasing presentation as is the case with the present invention. Indeed, the concept of an industrial textile cleaner is completely foreign to the favorable cosmetic presentation of the present invention. There is absolutely no reason to believe Wilson created anything remotely related to the present invention. Moreover, if Wilson did accidentally create the present invention, it would be seen in the art of Wilson as being a *non-working* example. Wilson clearly does not anticipate the present invention. This rejection should be withdrawn by the Examiner because it is not a credible rejection.

Separately, the Examiner has separately rejected previously filed claims 1-3, 5-6, 8-21 and 24-27 as being anticipated by U.S. patent no. 6,043,204 to Kaufman, et al. ("Kaufman"). The Examiner cites Kaufman for teaching the use of octyl methoxy cinnamate (column 5, lines 44-45), relevant surfactants (column 6, lines 5-45), exfoliating agents (column 8, line 35 for

lactic and glycolic acid), penetration enhancers (column 8, lines 32-33 for propylene glycol, butylene glycol and glycerin) and the claimed low-density oil (column 7, lines 45-67). The Examiner posits that the composition of Table 2, example 12 of Kaufman anticipates the present invention. Applicants respectfully traverse the Examiner's rejection.

The present invention, as described above, is referenced here. There is absolutely no evidence in Kaufman that Kaufman provides a disclosure which produces the presently claimed invention. Contrary to the Examiner's contention, the composition of table 2, example 12 does not give rise to the present invention because that composition is a completely mixed product which does not separate upon settling. That example is a composition which is a homogeneous emulsion, completely unlike the present invention and having only a single visual phase. Moreover, there is no evidence in example 12 that in order to use the product one mixes the visually separate layers- precisely because there is no need to mix the homogenous emulsion produced. That omission of a mixing step prior to use of the composition of example 12 belies its being a multilayered composition according to the present invention. There is simply no credible way that the composition of example 12 may be construed to be directed to a composition according to the present invention which settles into at least two visually distinct layers after mixing and consequently, Kaufman cannot be read to anticipate the present invention.

The §103 Rejection

The Examiner has also rejected previously filed claims 1-21 and 24-27 as being unpatentable over a combination of US 2002/20160023 of Bagdi, et al. ("Bagdi") and Kaufman. The Examiner cites Bagdi (same as PGPUB '023) as teaching multiphase formulations (see examples 1 and 2 for three and four phase formulations). The Examiner cites Bagdi further for teaching penetration enhancers, oils and exfoliating agents. The Examiner contends that Bagdi suggests the incorporation of sunscreens (the high density esters of the present invention). The Examiner cites Kaufman for teaching surfactants for use in body cleansing compositions along with other claimed ingredients.

Accordingly, the Examiner argues that it would have been obvious to one of ordinary skill in the art at the time of the present invention to prepare multiphase compositions of Bagdi and add the claimed sunscreens and surfactants of Kaufman for their beneficial effect on the skin. The motivation stems from the scientific knowledge that surfactants are used mostly in cleansing compositions and the motivation to add the sunscreen to the composition to provide protection from the sun. This, the Examiner contends, makes out a *prima facie* case of obviousness. Applicants respectfully traverse the Examiner's rejection.

The present invention relates to personal care cleansing products which are multiphasic and which produce at least two visually distinct liquid layers upon settling after mixing. The disclosures of Bagdi and Kaufman in combination in no way render the present invention obvious. Moreover, it is respectfully submitted that the Examiner has not made out a cogent case that the present invention is *prima facie* obvious over a combination of Bagdi and Kaufman because a combination of the cited disclosures would not produce a composition with at least two visually distinct layers which is a critical feature of the present invention.

The present invention relates to personal cleansing compositions such as body cleansers and shampoos, for example, which are multiple phase surfactant compositions comprising at least two distinct and separate liquid layers upon settling after mixing, wherein the compositions comprise a first or lower high density layer consisting essentially of at least one high density aromatic ester (as defined in the specification on page 7 as a high density aromatic ester emollient/conditioning agent) having a specific gravity of greater than 1.00 and at least one additional layer consisting essentially of a surfactant solution having a specific gravity which is less than the specific gravity of the high density layer. The present invention is directed to compositions which exhibit activity as surfactant compositions having emollient characteristics and a pleasant two-layered liquid presentation. The compositions are particularly adapted as personal care cleansing compositions having both cosmetic characteristics and favorable presentation. Thus, the present invention relates to personal care compositions which exhibit excellent surfactant and emollient/conditioning characteristics with a superior presentation, that presentation being the separation of the product into at least visually two distinct liquid layers.

Bagdi does not disclose or suggest the present invention. Bagdi, as perhaps hundreds/thousands of patents and other references in the cosmetic field, discloses the preparation of formulations by first preparing a composition in separate phases (actually, simple mixtures) and then mixes the phases together to form a final formulation or composition. Bagdi does not disclose or suggest that the phases should separate into at least two visually distinct liquid layers upon settling after mixing the final formulation. Indeed, such a proposition, is actually counterintuitive from the disclosure of Bagdi. Without any suggestion to provide a composition which actually separates into two distinct layers upon settling after mixing, Bagdi does nothing to render the present invention obvious. Bagdi's discussion of two phases refers to a typical emulsion, but an emulsion, by definition, does not present itself as having two visually distinct layers, as is the case with the present invention. Bagdi cannot reasonably be read to teach compositions according to the present invention which produce two visually distinct layers after settling and there is absolutely no mention or motivation to produce such a composition.

Kaufman, for reasons which have been previously stated, is not directed to compositions according to the present invention. For the reasons previously discussed, Kaufman does not make out an anticipatory rejection and cannot possibly *inherently* anticipate the present invention. The example the Examiner points to, example 12, does not separate into two visually distinct layers and is not taught to separate into two visually distinct layers. There is absolutely no evidence in Kaufman that the compositions disclosed therein are thoroughly mixed prior to use- because such an approach would be seen as compromising the compositions taught therein. As such, Kaufman actually *teaches away* from the present invention. Indeed, a two-layered composition is not even mentioned by Kaufman. Moreover, there is absolutely no disclosure in Kaufman which would motivate one of ordinary skill to produce the present compositions- indeed the concept that gives rise to the present invention- that of allowing two visually distinct layers to form upon settling after mixing- is actually anathema to the teachings of Kaufman.

Without a rationale which recognizes that the separation of a composition into distinct layers is actually cosmetically *favorable* (as opposed to a negative characteristic generally recognized by those in the art as representative of instability), there can be no motivation in a combination of Kaufman and Bagdi to produce the present invention. Most formulation

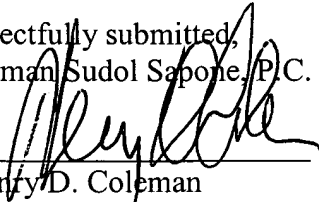
chemists actually work to *avoid* phase separation. The same is true for the teachings of Kaufman and Bagdi. Without the express teaching of the present invention, the prior art cannot be read as creating the present invention, especially when the present invention, when read in context with the prior art teachings is viewed as being extremely *unfavorable* (i.e., unstable). This is unlike the present invention which actively encourages phase separation because it is desirable cosmetically and a necessary feature of the present invention. Because there is no motivation to create the present invention, there is nothing in the combined disclosure of Kaufman and Bagdi which would result in the production of the present invention which is directed to compositions which form visually distinct liquid layers upon settling after mixing. Note that in the examples in Bagdi and Kaufman, the final products which are produced are *uniform*, and in the particular case of Bagdi, the homogenous compositions are gelled- precisely to lock in and avoid any separation into layers- a critical feature of the present invention. Thus, the combined teachings of Kaufman and Bagdi actually *teach away* from the present invention at the point of invention (the multiphase layered nature of the final composition) and cannot be cogently used to render the present invention obvious. Without some motivation or teaching (which is absent from Kaufman and Bagdi), the person of ordinary skill would provide a uniform, homogenous composition and would actually *avoid* the present invention.

For all of the above reasons, it is respectfully submitted that the present application is now in condition for allowance and such action is earnestly solicited. No claim has been added or cancelled. No fee is therefore due for the presentation of this amendment. If the Examiner decides that any fee is required, the Commissioner is authorized to charge any such fee or credit any such overpayment to deposit account 04-0838.

An indication of any charge made to the authorized Deposit Account is respectfully requested at the time of the issuance of a further office action, so that the charge may be accurately tracked for accounting purposes.

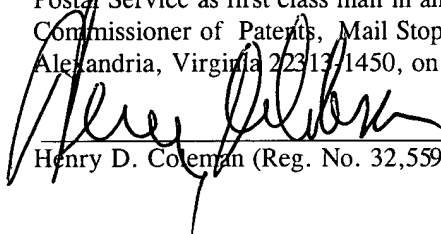
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Respectfully submitted,
Coleman Sudol Saponi, P.C.

By: 
Henry D. Coleman
Reg. No. 32,559
714 Colorado Avenue
Bridgeport, Connecticut 06605-1601
(203) 366-3560

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Henry D. Coleman (Reg. No. 32,559)